UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

MOTORS LIQUIDATION COMPANY, CASE NO. 09-50026-reg

Debtor.

- x

MOTORS LIQUIDATION COMPANY GUC

TRUST,

Plaintiff, ADVERSARY PROCEEDING

v. CASE NO. 12-09802-reg

THE LIVERPOOL LIMITED PARTNERSHIP,

ET AL,

Defendants.

- x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

October 21, 2013

2:06 PM

B E F O R E :

HON ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

ECRO - MATTHEW

HEARING RE: Motion Approving Global Settlement of GUC Trust's Objections and Adversary Proceeding Relating to Nova Scotia Notes, Among other Matters

HEARING Re: Doc. #12515 Motion of the Paulson Noteholders for Allowance of Limited Payment of Professional Fees and Expenses Incurred by the GM Nova Scotia Trustee in Connection with Settlement and Request for Expedited Treatment

Transcribed by: Sheila Orms and Melissa Looney

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P R O C E E D I N G S

THE COURT: Good morning. Have seats, please. Or afternoon, have seats, please.

Okay. We're here on the GUC Trust motion for approval of the settlement and thereafter, the 503(b)(3) substantial contribution request.

The motion is unopposed, the first motion is unopposed, the settlement motion is unopposed. Nevertheless, given the size of the matter, Mr. Fisher, if you or one of your colleagues wants to make any statement in connection with it, I'll give you an opportunity.

MR. FISHER: Thank you, Your Honor. Good afternoon. Eric Fisher from Dickstein Shapiro on behalf of the GUC Trust.

Since as Your Honor pointed out, there are no objections, I'll be heard just briefly in support of the settlement.

The standard, as the Court well knows, is that the settlement not fall below the lowest point in the range of reasonableness. Your Honor, I believe that the record here amply supports this settlement and demonstrates that the settlement is well within the range of reasonableness, and therefore, warrants the Court's attention -- warrants the Court's approval.

From the point of view of unsecured creditors of Old GM, there's really one number I think that matters, and that

demonstrates why this is a reasonable compromise of this litigation. And the number that matters is the $1.55 billion total allowed claim.

As Your Honor knows from having heard 16 days of trial testimony including 11 fact witnesses, and 7 expert witnesses, there were many substantial issues to be tried, and ultimately decided by this Court. And ultimately, we were facing $2.67 billion in claims, and that's a combination of claims that were guarantee claims asserted with respect to these Nova Scotia notes, and then a $1.6 billion claim under the Nova Scotia unlimited liability company statute that had been asserted by the Nova Scotia trustee, which consisted of guarantee claims, and then also a $564 million claim with regard to swap liability, that New GM claimed ultimately was owed to it.

Those two $2.67 billion of claims are being compromised for an allowed claim that totals $1.55 billion. And we submit that that's a reasonable compromise because of all the litigation uncertainty that surrounds this case. And the litigation uncertainty is not trivial. The arguments on the other side of the GUC Trust are serious arguments, and the swings are potentially very large swings.

So just to illustrate it with a simple example, if the Court were to allow one time the face amount of the guarantee, that's a $1.073 billion claim, and if the Court were

to find that the noteholders here are not entitled to any kind of double dip, but were to find that the swap claim should be allowed in the amount asserted, that would be a litigation result in excess of the $1.55 billion allowed claim.

That's just a simple illustration, and there are many others, and people will assign different probabilities to different outcomes, but that demonstrates how the allowed claim here is well within the range of reasonableness.

Another component of the settlement, of course, is that New GM has agreed as part of this compromise to pay $50 million, and that money is going to be used to pay fees incurred by the Nova Scotia noteholders, and then the remainder of that will be distributed to the Nova Scotia noteholders.

We're happy that New GM is part of the settlement, because this truly is a global resolution of the issues that were before this Court. We are, from the point of view, of looking out for the interests of unsecured creditors really agnostic as to that payment because it doesn't bear directly on recoveries to unsecured creditors.

The only thing that really matters to the unsecured creditors is the $1.55 billion claim. And the -- under the settlement, in the event that it's approved by this Court, there will be a distribution made to the Nova Scotia noteholders, consistent with the allowance of $1.55 billion. The mechanics of that distribution are laid out in the

settlement agreement.

And the GUC Trust has been maintaining a reserve with regard to this litigation, of distributable assets with regard to $2.69 billion of claims. Following the distribution to the Nova Scotia noteholders, the GUC Trust expects to be able to make what's called an excess distribution, based on the difference between the 2.69 and the 1.55, and that, of course, is a distribution that will be for the benefit of all claimholders, and is a substantial benefit to unsecured creditors.

For all those reasons, I believe that this is a reasonable compromise that warrants this Court's approval. I also think that in considering the record on which this Court should approve the case, that the Court -- it would be appropriate for the Court to consider the entire trial record. Because, Your Honor, no one is more familiar with the issues in this case and with the risks, and the possibilities of different outcomes than you are, having made yourself available and presided over 16 days of trial, and voluminous briefs in what is a very complicated case. And we think that that record, together with the motion papers forms a very solid basis on which to grant approval of this motion.

I would be remiss, Your Honor, if in recommending the settlement to you we didn't also acknowledge the extraordinary efforts of your colleague, Judge Peck, who following on the

heels of a failed effort to mediate this case, stepped in and was extraordinarily persistent, subtle, and committed to helping us all reach a settlement. And without his efforts, I don't think that we would have succeeded in reaching the settlement that we did.

And I also want to specifically acknowledge the efforts of my client, the GUC Trust, Wilmington Trust Company as trust administrator, and FTI as trust monitor. It was not easy to stick with this litigation, and to show the resolve that was necessary to see it through, when that kind of resolve was necessary. And when the time came to show flexibility and compromise, Wilmington and FTI, as administrator and monitor, were prepared to do that as well, ultimately all in service of trying to achieve the best possible outcome for unsecured creditors.

If Your Honor doesn't have questions, I'll leave my remarks at that.

THE COURT: All right. No, I don't. Thank you very much, Mr. Fisher.

Does anybody else feel the need to be heard before I rule?

Mr. Zirinsky?

MR. ZIRINSKY: Thank you, Your Honor, Bruce Zirinsky on behalf of certain Nova Scotia noteholders.

I just want to concur in Mr. Fisher's comments. As

Your Honor knows, this was a -- has been a tough long and very hard-fought litigation from the prospective of all parties.

I think all parties felt that they had strong arguments, and strong claims, and in the case of the GUC Trust, they thought they had certain strong defenses. There were many issues in this case. The parties devoted four years in preparing for and litigating this case. Your Honor had the good fortune of having been an observer, and in large part, a participant in all of this.

I do concur that it's a fair settlement. We can disagree as to, you know, whether we're at the bottom of our range or the bottom of Mr. Fisher's range, but I think the most important thing from the Court's perspective is that we all finally were able to come together with the good offices of Judge Peck to come to a closure on a settlement that everybody was either reasonably happy with or reasonably unhappy with, as the case may be.

And I also think from the perspective of my clients, we want to thank the Court for the Court's patience over the course of the past several years in listening to all of this. We'd also like to thank all of the parties for finally coming to the table I think in making the best good efforts to try to avoid what would potentially be number one, a difficult decision for Your Honor to write, and number two, I'm sure that there likely would have been appeals, regardless of what Your

Honor ultimately decided. And I think approval of this settlement not only represents a fair result, but also eliminates the need for potentially another two or three years of litigation and appeals.

And I think its best, and I think everybody agrees that it's time to bring this to a conclusion. Thank you.

THE COURT: All right. Thank you.

Okay. Everybody had a chance to speak their peace?

(No response)

THE COURT: Okay. Everybody sit in place for a moment.

(Pause)

THE COURT: Ladies and gentlemen, in the matter before me, the GUC Trust seeks approval of a settlement with respect to the Nova Scotia bondholders' litigation, and all of its various manifestations.

Understandably, the GUC Trust motion is unopposed. Assuming without deciding that I have an independent duty to review an unopposed settlement when the underlying controversy is of the magnitude that we have here, I've reviewed the settlement for reasonableness. And after that review, I determined that the settlement should be approved.

The bases for the exercise of my discretion in this regard follow. You all know the standards for approval of a settlement, and I'll address them only briefly.

The legal standard for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate. See for example In Re Purified Down Products Corporation, 150 B.R. at 523.

Here, I can easily make that finding. In that connection, of course, I find the considerations that cause a settlement to be in the best interests or not in the best interests of an estate apply equally to an entity such as the GUC Trust that we have here, that stands in the shoes of the unsecured creditor community and the Old GM estates.

The Supreme Court held in Protective Committee for Independence Stockholders of TMT Trailer Ferry versus Anderson, that to determine that a settlement is in the best interests of the estate, the settlement must be fair and equitable. Such a finding is to be based on the probabilities of ultimate success should the claim be litigated, and I'm quoting, an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.

The bankruptcy court need not conduct an independent investigation into the reasonableness of the settlement, but

must only "canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness." In Re WT Grant Company, 699 F.2d at page 608, that's a decision from the 2nd Circuit in 1983.

Nor, is it necessary for the Court to conduct a mini trial of the facts or the merits underlying the dispute, see Purified Down Products, rather the Court only need to be apprised of those facts that are necessary to enable it to evaluate the settlement, and to make a considered and independent judgment about the settlement. See for example, Purified Down Products again, 150 B.R. at 522.

But here, of course, I've already conducted the trial, had the benefit of the post-trial briefs, and have quite a good sense of the underlying evidence, the legal issues, and tentative leanings I would have had before going into oral argument on the originally scheduled date, which if I recall correctly, was on October 9.

So here I have the luxury not present in most of the settlements I'm asked to review, of being unusually well informed with respect to the evidence of the underlying issues, and ranges of foreseeable outcomes, although many of these issues would've been decided only after a hearing, oral argument, and giving the matter supplemental thought in major respects.

Here, because the settlement came only after so much

effort and expense, in the way of pretrial discovery, the trial itself and pretrial and post-trial briefing, the cost analysis is somewhat different than it would be in other cases, which are settled in their earlier stages.

But it's obvious that with aggregate claims of approximately $2.7 billion and the noteholders' desire to protect the approximately $360 million that they'd already received as part of the consent fee, any ruling I'd issue would be subject to lengthy appeals by the noteholders, the GUC Trust or both, and create expense to each.

To the extent that the GUC Trust was successful in the proceedings before me, it's a near certainty given the amount of -- at stake, that my decision would've been appealed by the noteholders with that appellate litigation going up to the district court, and more likely than not, to the circuit. The converse is likely also true.

It is also foreseeable that we would have to had further proceedings in this court, as to whether assignees of debt would be subject to defenses in equitable subordination concerns that would've been applicable to the assignors, which is a matter as to which no binding authority now exists, and which could also be expected to be appealed by one side or the other, and go up at least one appellate level, if not also more.

Here, of course, the settlement was negotiated at

arm's length by sophisticated counsel on each side, and is the result of the extraordinary mediation efforts by my colleague, Judge Peck, whose efforts not only made settlement possible, but also gives me greater confidence as to the quality of the settlement process.

And Old GM's unsecured creditors will benefit greatly by reason of this settlement, partly by reason of the success of the GUC Trust in reducing claims in the estate by over $1 billion, but also importantly freeing up the value that had been reserved to satisfy claims of such enormous size that now becomes available for distribution to Old GM's creditors.

Canvassing the issues here, there never was any possibility of the 2009 sale to New GM being undone in its entirety, as some pundits surprisingly have suggested. There is speculation in that regard demonstrated a failure to understand what the GUC Trust was asking for, and of course, a rather striking ignorance of the law in this area.

At most, we would've been talking about whether elements of the 2009 order approving the sale should be modified. But even such a request would have run head on into principles making it exceedingly difficult to selectively modify a sale and confirmation orders, as exemplified by decisions like Judge Buchwald's on the tort litigants 2009 appeal of the sale order. But the other issues were much more debatable.

The dynamics of the underlying transactions, what was said and done at a time when the auto industry was an extremist were extraordinarily damning for the claimants. The so-called oppression action some of them brought was very troublesome to me. The greed and arrogance that several of them displayed at a time when the future of the entire auto industry was at stake, was and is, surprising to me even to this day.

The effective appointment of the Nova Scotia trustee, Green Hunt Wedlake, and the degree to which its principal worked with the hedge funds or at least arguably at their direction was extremely troublesome to me as well. And how a swap as to which the Old GM estate was in the money to the extent of approximately $632 million was transmogrified into a liability against the Old GM estate, to the extent of $564 million boggles my mind to this day.

But ultimately the issues would've been decided under the law, and the legal issues were and remain difficult. These issues would've included exactly how much objectionable conduct at the expense of all of the debtors' other creditors goes over the line in justifying equitable subordination.

On other fronts, the GUC Trust had to confront the fact that as a general matter, guarantees are respected in multi-obligor Chapter 11 cases, even though they typically have the effect of double recoveries for those who are the beneficiaries of those guarantees.

But then on the other hand, the testimony of the GUC Trust expert Kim Gee (ph) with respect to the English and Canadian rule of double proof, which would've prevented a double recovery on the Nova Scotia notes was quite persuasive, and I was not of a mind to discount it by reason of his relative youth. And the evidence was quite strong that the requirements for a valid assignment of the swap were not complied with.

Thus, though, equitable subordination would've been perhaps, at best, jump ball, the claims against the estate would still have to be reduced considerably, probably down to about half of the amount by which they were asserted.

Even assuming that I determined that the conduct of the hedge funds in the pre-June 2009 period was sufficiently egregious to cause me to believe that their claim should be subordinated, I'd have a difficult decision as how to deal with Paulson and any other entities who acquired the claims later.

Of course, the Paulson entities were blameless with respect to the prepetition activities that were so offensive. But it's more likely than not that I would've agreed with the ruling by Chief Gonzales in Enron, back when he was still on the bench, to the effect that one can't launder one's exposure to defenses on notes by selling them to someone else. Contrary to the ruling by a district judge on that matter which was binding on Judge Gonzales, but wouldn't be binding on other

bankruptcy and other district courts in the Southern District of New York.

I think it is likely, if not certain, that if this issue had to be decided by me, whoever lost it, would take it up to the district court, if not also eventually to the circuit.

The evidence as to whether the lock-up agreement was finalized before or after the time of filing of Old GM's Chapter 11 petition was disputed. Very possibly I would've found that while edits to the typed form of the agreement were made after the time of filing, the agreement was finalized in any and all material respects at an earlier time, at which the signatories released their signature pages.

It's also more likely than not that if I had to review the transaction as a post-petition transaction, I would have approved it, notwithstanding how expensive it turned out to be to the unsecured creditor community.

As unfair as that payment was to Old GM's other creditors, the decision to pay it would've been a classic matter of business judgment, and would've fairly easily passed muster under the business judgment rule. A very, very strong showing was made as to the importance of keeping GM Canada out of insolvency proceedings, and of the need to avoid having parallel insolvency proceedings going on in two countries at the same time.

The evidence also was leaning in favor of the view that the lock-up payment was made by GM Canada using funds that were lent by Old GM but later paid back. Thus, if the payment of the so-called consent fee was wrongful, it would've been an offense mainly against GM Canada, and not against Old GM, which at least arguably wasn't damaged thereby.

The views of pundits as to this once again are silly; evidence at the trial show that the lock-up agreement was disclosed in an 8K that was available to the investing public. That shows one thing, but not another. It tends to show that Old GM's management and counsel were not in any way trying to hide anything, and that they at least seemingly complied with Old GM's 34 Act reporting duties.

It does not show, however, despite suggestions by some to the contrary, that I, as a judge, was on notice of it, or should've been on notice of it. The implication that a judge should have on notice of something not in the record, not called to the judge's attention, and not said to be relevant to any judicial decision then before the Court is puzzling.

On matters involving disputed issues of fact, judges limit their rulings to matters in the record, or as to which they can take judicial notice under Federal Rule of Evidence 201. On matters involving their discretion, they can and do use their life and judicial experience to achieve the most sensible result. But they're doing so is limited to deciding

matters then before them.

Stepping back, we see that except for issues on the periphery, or which would've led to factual findings, but findings that were then subject to substantial debate as to the laws' application to them, this was a very, very close case with a bundle of issues that could've gone either way, and even though as my canvassing of the issues suggest, I've thought about these, could still have swung in either direction with what Mr. Fisher properly identified as dramatic consequences.

Ultimately, the negotiated result approximates the result that likely would have been the outcome before the appeals and cross appeals, if I'd been forced to rule, and perhaps after all of those appeals and cross appeals were concluded as well, it falls within the range of reasonableness and it will be approved.

Mr. Fisher, I don't know whether you've worked with the other parties to draft up a settlement approval order, or whether you considered that presumptuous before today, but what I would like you to do at your earliest convenience is to draft one up, run it by the other parties to the settlement, and when you can give me an e-mail of transmittal, you can provide me with the order in word processing format as an attachment to the e-mail, with representation that the parties to the settlement are comfortable with it, it will be signed without further hearing and notice.

With that, we go on to the second issue. I'm going to take a brief recess to allow anybody who was here only on the first matter and doesn't care about the substantial contribution application to leave.

We'll be back out here, it's now 2:40, be back here in ten minutes, please, 10 of 3. We're in recess.

(Recessed at 2:40 p.m.; reconvened at 3:05 p.m.)

THE COURT: Have seats, please.

Okay. Mr. Reisman, I'll hear from you momentarily. I also assume I'll hear from Mr. Jones on behalf of the government.

Gentlemen, make your presentations as you see fit, but there are two things that I want you to cover by the time you're done, especially by you, Mr. Reisman. One is to confirm my understanding that the settlement that I just approved is not dependent on the outcome of this motion, and that this doesn't tie my hands in any way or my desire, or my belief that the settlement is a good one, doesn't impair my ability to do that, which I think is right.

The second is a statutory issue, not addressed by either side, which is the requirements of 503(b)(3)(D) that the expenses be actual and that they be incurred by the applicant, and the showing that I have before me is to the extent to which putting aside whether there was a substantial contribution, that statutory requirement has been satisfied.

Okay. Go ahead, Mr. Reisman.

MR. REISMAN: Thank you, Your Honor. Good afternoon. Steven Reisman with Curtis, Mallet-Prevost, Colt & Mosle LLP representing Paulson & Co and various affiliated funds which hold the notes that were at issue in the underlying litigation, which we are pleased that Your Honor approved today; the settlement of which Your Honor approved today.

I want to respond to Your Honor's two questions, first and foremost. First, I would never, ever tie Your Honor's hands with respect to tying in a substantial contribution request and agreed upon relief with a settlement motion. It is in no way, the approval of this motion, we will abide by what Your Honor should rule with respect to this. The approval of this motion is -- was agreed in the settlement that the GUC Trust would not object to the relief, but it in no way binds Your Honor with respect to any decision that Your Honor should make with respect to it, whether Your Honor should be inclined to grant the relief, or decline to grant the relief, we would never look to do that in this motion, nor in any motion that we would make. That's the first point.

The second, with respect to the statutory issue, and I'll get to that probably a little bit more in the presentation, but I will represent to the Court that the fees and expenses incurred by Paulson & Co with respect to this litigation well exceed the $1.5 million that is being requested

here.

The way we came up with the number, it was really to defray costs and expenses that we believed that we were going to have with respect to noticing and obtaining approvals in Canada. My understanding as I represent to Your Honor, and these are rough numbers so -- and I am not a Canadian lawyer, nor qualified in any respect to speak to what the costs are in Canada, but with respect to the distribution that's going to be made by the Nova Scotia trustee when the settlement is implemented, there is approximately $600,000 or so, probably a little bit more in taxes, and I call them taxes, but in obligations that have to be paid to a non-noteholders in order to make the distribution in Nova Scotia, and that is a requirement of the law in Nova Scotia.

There's also the costs and expenses of the Nova Scotia trustee, and their counsel, there are a number of hearings, there was a procedural hearing, there's a noteholder's meeting, there's a formal hearing, there's motions that are as thick, if not thicker than the ones that have been filed before Your Honor, with respect to approval of this settlement.

And there's also the fees and expenses of Akin Gump which were capped, and stopped based upon the settlement that was reached with respect to documenting of the settlement agreement, and obtaining approval of the settlement agreement

before this Court and in Nova Scotia. And those fees and expenses and that number coincidentally, and I mean this truly coincidentally totals approximately $1.5 million.

THE COURT: What confused me, Mr. Reisman, is that my understanding of the underlying settlement agreement, the one I approved 15 minutes ago, had led me to believe that of the $50 million that New GM had put up, that about 17 million of it was earmarked for the payment of fees, including, as best I recall, 2 and a half million for your client, and 1 and a half million for the Nova Scotia trustee, which I understood to be a different 1 and a half million than the one that's the subject of this application.

But I also heard you say, from what you just said, that we're still talking about future payments rather than past payments.

MR. REISMAN: They are past payments, but the 1 and a half million dollars that we're seeking is going to -- it's going to be distributed -- our request is that it be distributed directly to the Nova Scotia trustee, and flow through that waterfall. That -- we're asking for a substantial contribution, the Paulson noteholders are asking for that, but we're asking for the money to be paid to the Nova Scotia trustee. We're not asking it go directly into our pockets.

Indirectly some of it is going to come back to the Paulson noteholders, it's going to come back to Morgan Stanley,

it's going to come back to all of the noteholders that are here. It's also going to defray the costs or some of that will be used, dollars are fungible as Your Honor is well aware, the money is going to be used to pay the costs of Nova Scotia counsel and the tax that's in -- is being imposed in Nova Scotia.

THE COURT: I've had some dealings with Canadian law, but mainly in Ontario, not in Nova Scotia. To what extent is Canadian law similar to U.S. law that people like trustees and their counsel get paid out of the estates for which they provide services?

MR. REISMAN: Your Honor, my experience with Canadian law is similar to yours. I spent a lot of time before Judge -- Honorable Justice Farley when he was on the bench and the Honorable Justice Holden before then, and the Honorable Justice Morowitz in Toronto, and so I do not have experience in Nova Scotia, though I've been to Nova Scotia and it's a beautiful place, and I will likely be back.

THE COURT: I have as well, and I agree with you on how beautiful Nova Scotia is, although I wouldn’t want to exclude Prince Edward Island from that as well.

MR. REISMAN: Or the west.

THE COURT: But one thing which you probably do know or know from its absence, they can't assess your client for the expenses. Your client's recovery may be reduced as a

consequence of any fees that may be paid, but your client doesn't have to write out a check to the Nova Scotia trustee; am I correct?

MR. REISMAN: Correct, Your Honor, correct. What -- the expenses of the Nova Scotia trustee were being borne by -- I'm not trying to create any arguments, or have Mr. Steinberg stand up in any way and if I say anything out of line, I know he'll correct me, but I'm trying to talk in a very general expense.

The -- expenses of the Nova Scotia trustee were being borne by or the reasonable fees and expenses of the Nova Scotia trustee were being borne by GM, throughout the case. And when we reached the settlement --

THE COURT: By New GM?

MR. REISMAN: By New GM, that is correct, Your Honor.

UNIDENTIFIED: GM Canada.

MR. REISMAN: Sorry.

UNIDENTIFIED: GM Canada.

MR. REISMAN: Thank you. I'm corrected, Your Honor, it's by GM Canada, not --

THE COURT: But not a debtor on my watch.

MR. REISMAN: Not a debtor on your watch. They were being borne. That as a result of the settlement, that stopped. And the expenses continued to be incurred, and therefore, this is part of that type of, you could say, indentured trustee

reimbursement type concept, because the number that is going to likely go to the Nova Scotia trustee, counsel in Canada, and counsel in the U.S., is the 1.5 million which is set forth in the settlement agreement, and is also by coincidence, one could say or not really, the 1.5 million that I stand before Your Honor seeking on behalf of the Paulson noteholders to be distributed to the Nova Scotia trustee, to go through the waterfall and to pay off the top the expenses of the Nova Scotia trustee.

I don't know the law, Your Honor, but my understanding of how the money will flow is, I believe, in line with what you previously said, which is the fees and expenses get paid off the top, and that individual holders don't come out of pocket.

THE COURT: Uh-huh. Go on, please.

MR. REISMAN: Okay. Your Honor, you have the -- as you said before, when you were approving the motion and reading into the record your order, you have the luxury of being well informed here.

I truly wish you could've been less well informed, and this could've been resolved a lot earlier. And I think you know from the very first day we got involved on behalf of the Paulson noteholders, I believe at the very first hearing, I had suggested the possibility of -- the very first time I said before you on behalf of the Paulson noteholders, I had stood

before you and mentioned the possibility of mediation or trying to resolve this.

At the time, the parties were not inclined to do so. Nevertheless, we continued to press forward in that regard, and we were successful. I don't think anyone will doubt or rise up to say that what I'm saying is not true, which is the Paulson noteholders were the party that was pushing throughout the process for a resolution through mediation. And we were the party that brought together the first mediation, with a private mediator, and Your Honor is well aware of my letter and the subsequent phone call. My letter to you of May 30th, 2013 and the subsequent phone call with all the parties involved where we requested court-ordered mediation with the assistance of Judge Peck.

That's been my objection from the beginning. Don't get me wrong. The objective was to win for the client, but sometimes winning for the client is settling the matter, and that's how I looked at the matter when I saw the enormous complexity -- enormous and complex issues that would've had to have been decided by Your Honor.

So I point that out to Your Honor. We filed our motion, you have our reply, you have the objection, I think the record is pretty full. I just want to point out a couple of things. One is that the notice of this motion was served on all creditors and parties in interest, and there's only one

objection. It's a serious objection, it's by the Office of the United States Attorney for the Southern District of New York, and we take it as a serious objection to the relief that has been granted.

But nevertheless, the U.S. Attorney was not involved in this case, was not -- and readily admits in their objection that they have no first-hand knowledge of the efforts made by the Paulson noteholders, or the matters that preceded before Your Honor.

Your Honor, I believe that the -- that Section 503(b) of the Bankruptcy Code would approve the reimbursement if applied, would approve the reimbursement of the actual necessary expenses incurred by us in making this substantial contribution to the estate.

What is the substantial contribution? The substantial contribution is a number of items. One, it's getting the parties to the mediation, and in fact, having the mediation, both the private mediation which formed, I would say the foundation for the settlement that at least poured the concrete, some of it in the ground for building the settlement which Judge Peck was able to build.

The second is, obtaining the contribution from New GM or of GM Canada of the $50 million, which Your Honor, I will tell you having been involved in those settlement negotiations, this matter would not have settled. There is no chance, zero,

but for the contribution of a third party, New GM/GM Canada. That $50 million contribution, which inures to the benefit of all of the creditors here. It inures to the benefit of all of the creditors of the GUC Trust in a number of ways.

One, it resolves this litigation. Two, it frees up approximately $1.14 billion for an excess distribution to be made. Three, it saves a tremendous amount of time and expense.

Your Honor stated in his ruling that you thought that there would likely be one level of appeal, you're well familiar with the parties that are involved in this litigation, and they are some of the toughest advocates and litigious parties that I have dealt with over the years. They are very strong in their belief and their conviction. And I believe that the mediation process truly is the only way that we would've reached the settlements here, and that Judge Peck, and that's why I specifically asked for Judge Peck because of his unique abilities in bringing the parties to a settlement. And I thought that his unique abilities, from my experience, having him as a mediator in several other matters, MF Global being one of them, he really used his skill, his knowledge, his persuasion, and his expertise as a former bankruptcy practitioner, and as a now sitting federal bankruptcy judge, and the experience he has there, to bring the parties to the settlement.

I believe I made the point, but just to state it

again, that the GUC Trust will undoubtedly save millions and millions of dollars in fees as a result of the settlement that was reached here, and the efforts of the Paulson noteholders in pushing the parties to a mediation, getting them to a settlement.

I just want to end, Your Honor, by just quoting paragraph 38 of the motion that was made by the GUC Trust for approval of the settlement.

THE COURT: Well, the underlying settlement.

MR. REISMAN: The underlying settlement. And it's a statement that was made by the GUC Trust, as to why the settlement should be approved, but I think it's helpful here, as to the benefit to all general unsecured creditors. And do I -- is this in the self-interest of the noteholders? Surely. But it's also in the interests of all what we've done here, the overall settlement is in the interests of all the unsecured creditors. And the efforts that we made resulted in a clear benefit to all of the unsecured creditors.

Be it that, it would've taken another $50 million of value; i.e., approximately $150 million of allowed claim to get this settlement approved, which we obtained from a third party.

THE COURT: Well, there's another alternative, isn't there, that those on the claiming side of the litigation could've just taken $50 million less.

MR. REISMAN: There is, that's correct. But I will

tell you, that wasn't going to happen. And --

THE COURT: Because they wanted more.

MR. REISMAN: That wasn't going to happen because -- well, I don't want to get into the mediation but --

THE COURT: No, don't give me 408 stuff, but --

MR. REISMAN: But I do want to -- I believe that all of the parties that were involved in the mediation process believed that while not what they wanted, what's the line, you know, sometimes, you don't always get what you want, but you get what you need, not to quote the Rolling Stones, but --

THE COURT: I'm old enough to remember that.

MR. REISMAN: But I believe that all of the parties that were involved in that mediation process would agree in that fact.

So just reading paragraph 38, Your Honor, "approval of the settlement will result in the allowance of a $1.55 billion claim and release of more than $1.14 billion of unsecured claims reserves. The release of the $1.14 billion of unsecured claims reserves will provide for an excess distribution, that will result in improved recoveries for all general unsecured creditors. The settlement will achieve certainty, and cost savings for unsecured creditors in connection with this litigation that will otherwise likely continue for years, and will permit the GUC Trust to release reserves for the benefit of all general unsecured creditors.

The settlement thus serves the paramount interest of the general unsecured creditors of Old GM."

THE COURT: Okay. Thank you.

MR. REISMAN: Thank you, Your Honor.

THE COURT: Mr. Jones.

MR. JONES: Thank you, Your Honor. May it please the Court, David Jones from the U.S. Attorney's office.

At the outset, I just want to answer the Court's questions. We too were concerned about whether filing an objection could interfere with finalization of the settlement, and made inquiries, and were assured that the answer was no, that the two are independent, and Mr. Reisman has confirmed that now.

As to the statutory issue the Court raised, we had not independently considered that, and obviously don't have information about the basis for the fees asserted, so we'll defer to Mr. Reisman's answer on that. Although I do notice that his explanation kept gravitating to the 1.5 million that will be incurred by the Nova Scotia trustee in the future in implementing this. But I take it at his word that -- and I'm sure it's the case, that his client have incurred that much or more in fees to date based on other work they've done on the litigation.

THE COURT: Course, that's not what he's asking for the money for. He's not asking for checks that Paulson has

written. He's asking for future payments of the Nova Scotia trustee, if I understood his original pleadings, and the further explanation he gave me today.

MR. JONES: I think since I'm untainted by actual knowledge, I should just defer to Mr. Reisman's explanation and the Court's reading of the papers, but I think that is correct.

If I can circle back to one of the fundamental reasons why the United States appeared and filed this objection, as the Court knows, the Treasury Department along with Canada was the DIP lender in this case, and as such, the government continues to have a lien or reversionary interest in administrative funds held by the GUC, so that if it -- and I understand those funds are what would be drawn upon by this fee application.

So we do have a, at least potential financial interest in the funds at issue here. The government's commitment throughout this case, as the Court knows, has been to fund the estate through its liquidation as is appropriate and required under law, but again not to pay more than is required or necessary to achieve the orderly wind down of the estate.

And so we wanted to reality test how that proposition and that commitment applies to this application. We did carefully read the moving papers, and again carefully read the reply papers, and we simply don't see how any of the supposed

benefits or contributions conferred to the estate differ in kind from any of the benefits that an estate ordinarily would realize, when a creditor stops contesting a disputed matter and settles a claim dispute or litigation with the estate.

So, of course, the intensity of this litigation is very great, and the dollar stakes are enormous. And we have no dispute. We, of course, expressed no dispute with the settlement of the dispute. But when one says that the estate benefits because it will incur no further litigation expenses or legal fees because we've stopped litigating, that's again true of any settlement of a claim.

Likewise, permitting the release of reserves that are held on account of these now settled claims is a consequence of an any claim resolution, and so I don't understand as a principled or theoretical matter why those things, although large here, would justify a substantial contribution fee award.

Likewise, the movants emphasized their role in or participation in mediation. Again, as we fully concede, we weren't first hand participants in that, but ordinarily a mediation is a bilateral or multi-lateral process where each side bears their expenses, in an attempt to achieve resolution of a dispute. That appears to be what happened here, and so I'm not sure what makes that, in these circumstances, a substantial contribution to the estate as a whole.

Likewise, with the expenses that will be incurred by

the Canadian trustee, and Your Honor's questions I think brought this out, or the answers to Your Honor's questions, evidently the trustee ordinarily has to do whatever the trustee needs to do to serve the needs of noteholders under Canadian law, and the expenses of doing that are borne by the corpus of the notes whose interests are being represented. And so if that's the case, again, I don't understand why that expense should be rightly under the law shifted to the estate here.

And finally, as to the contributions of New GM, the $50 million recovered from New GM, again a settlement could have been achieved if the noteholders would've accepted less money, as is true, although they may not have, and it may well be the case that that last incremental value was indispensable to them. But at one point Mr. Reisman did acknowledge that -- or characterized one benefit to the estate as the fact that achieving that 50 million recovery allowed them to drop their demand of an allowed claim amount against the estate by 150 million, given the payout rates present here.

That again suggests that what we're really looking at, at least in economic substance, is simply a recovery of value that was of importance to a creditor group, and they were able to recover some value from a non-estate source, but that doesn't make the paradigm here or the basic relationship of the parties any different from any other creditor/estate relationship.

So for those reasons, and I should say by the way, Your Honor, we do fully concede that we are not personally familiar, I'm not personally familiar with the conduct of the litigation. If the Court perceives that there was substantial benefit conferred that I'm not apprehending, we'll have no problem with that. But given our concerns in light of having read two sets of papers from the movants, we wanted to at least call these issues to the Court's attention, and seek the Court's ruling in light of our observations. Thank you.

THE COURT: All right. Thank you.

Mr. Reisman, reply?

MR. REISMAN: Your Honor, very quickly, I'm not one who normally takes on the role of representing noteholders in these situations, though I've done it before. And as Your Honor aptly notes we bought these claims. We didn't get the consent fee. We were not involved in the process early on.

I'm also not one -- I can't think of any time in my career where I've ever made a substantial contribution application. And it's mostly because -- it's not that I haven't been asked to make it, but I don't feel, in most instances that the work that we did and the value that we brought to the situation merited that. I do feel that here and I share that with you.

I also want to clarify a couple of points. One is that GM Canada was paying for the fees and expenses of the Nova

Scotia trustee. And they were going to pay for the fees and expenses of the Nova Scotia trustee on a go forward basis. As a result of the settlement, clearly, they stopped $50 million that's it, not a penny more. And the parties will abide by and have agreed to abide by that.

THE COURT: Pause please, Mr. Reisman, because obviously I tried to get myself knowledgeable about the settlement, but when you get into particular subcomponents, my memory of the detail falters.

MR. REISMAN: Sure.

THE COURT: Am I right that after the amounts of the various claimants were reduced and allowed under the settlement I approved now a half an hour ago, the GM Nova Scotia trustee still gets in the order a magnitude of 500 million bucks in the way of an allowed claim?

MR. REISMAN: The GM Nova Scotia trustee -- yeah.

THE COURT: What is the reduced and allowed amount of the GM Nova Scotia trustee? Mr. O'Donnell wants to pass you a piece of paper. That's fine. I thought it was about $500 million, about half of what he had originally asked for.

MR. REISMAN: Correct.

THE COURT: But I may be mistaken.

MR. REISMAN: 477,000, I was remembering --

THE COURT: 477 million.

MR. REISMAN: 477 million, correct, Your Honor, yeah,

thanks. Thank you.

THE COURT: Okay. And are claims in the GM estate now delivering value at roughly 25 or 30 cents on the dollar?

MR. REISMAN: I don't, you know, I try not to follow the market in that regard, but if I could just have -- if I could have one moment I believe there are parties that do know.

THE COURT: Yeah.

(Pause)

MR. REISMAN: As of about three weeks ago, Your Honor, I'm advised by Mr. Steinberg to his recollection they were about 34 cents on the dollar.

THE COURT: 34?

MR. REISMAN: A compliment to the fine job that Mr. Fisher and his team, Mr. Sidell have done in managing the GUC Trust.

THE COURT: And also possibly the value of the New GM stock that people get as part of the distribution?

MR. REISMAN: And that's a compliment to Mr. Bonomo (ph) and the GM team.

UNIDENTIFIED SPEAKER: That's the primary driver.

MR. REISMAN: That is, in fact, the primary driver.

THE COURT: Okay. Continue, please.

MR. REISMAN: The point I was going to make was approximately $550,000 to $600,000 of the attorney's fees that have been incurred to date by the GM Nova Scotia trustee. I

don't want you to think this is a million and a half on a go forward basis.

The fees and expenses were originally all -- of the GM Nova Scotia trustee were going to all going to be paid by GM Canada. As a result of the settlement, that stopped. Now there's going to be a million and a half dollars that are going to have to be borne by the noteholders as a whole and that does tie into the number that we're requesting.

I point out that at the time that we worked -- that we've worked on the settlement agreement that number had not in fact been finalized and we did not know what that number is. That's why I say coincidentally.

I do represent to Your Honor that we incurred, you know, substantial legal fees in this case upwards of the $2.5 million. I haven't done the last bills as of yet and we're unclear as to what Your Honor is going to, in fact, rule today and the work that continues to remain. But those are caps, Your Honor, on terms of what the professionals have agreed they will recover off the top here.

Your Honor, I do think that we've made a substantial contribution to the estate. I do think that we made a substantial contribution to all of the unsecured creditors that remain in the GUC Trust and for those reasons and the reasons set forth in the papers and my argument, I would respectfully ask that Your Honor approve the requested relief. Thank you.

THE COURT: Thank you.

All right folks sit in place for a moment please.

(Pause)

THE COURT: All right. Ladies and gentlemen, in the second motion before me, six of funds managed by the Paulson Family of Funds who call themselves the Paulson noteholders seek allowance under Section 503(b)(3)(D) of the Code of an administrative expense claim in the amount of $1.5 million based on an asserted substantial contribution to the case by the Paulson noteholders, Elliott, Fortress and Morgan Stanley who Paulson calls certain noteholders and Green Hunt of Wedlake the GM Nova Scotia trustee.

Paulson's motion is objected to by the United States Government represented by the U.S. Attorney's office here in the Southern District of New York. The Government's objection is sustained and the motion is denied.

The motion fails to show that the requested sums are "actual," or are incurred by, "Paulson" or for that matter the others Elliott, Fortress and Morgan Stanley, and fails therefore to provide me with the fundamentals that must be found before I reach the issue as to the extent to which the contribution was made and was substantial. And apart from that, I cannot find that the requirements for establishing a substantial contribution have been satisfied.

The Paulson noteholders' effort, while a refreshing

contrast to the actions of other noteholders in the case were still principally in their self-interest. Efforts by the others, Elliott, Fortress, Morgan Stanley and Green Hunt Wedlake were likewise. And efforts by several were actually destructive to the interests of the estate and to other creditors in the case.

My first problem, which is effectively a threshold issue, is its failure to bring the application within the range of my discretionary power under the statutes. As relevant here, Section 503(b)(3)(D) authorizes allowance of an administrative expense for the actual necessary expenses, other than compensation and reimbursement specified in paragraph 4 of this subsection incurred by a creditor in making a substantial contribution in a case under Chapter 9 or 11. I omitted certain irrelevant portions.

Before one gets to, "substantial contribution," one must satisfy the requirements of the key words, "actual," and "incurred by." Each requires payment of the actual and necessary expenses or in the view of some, a contractual obligation to pay them. Here there has been a showing of neither.

The expenses claimed by the Paulson noteholders are said to be "expenses incurred by the GM Nova Scotia trustee in connection with the mediations and consummation of the settlement agreement." Motion in paragraph 26.

Putting aside the fact that the expenses are so vaguely described and putting aside matters like timesheets would still never pass muster under a normal fee app, there's no showing that the expenses have yet been incurred. Paragraph 18 of the reply suggests that they haven't and Mr. Reisman's very candid responses to my question led me to believe that most if not all of them are yet to be incurred, nor is there a showing that the Paulson noteholders paid the requested expenses or are contractually obligated to pay them or for that matter even wish to write out voluntary checks to pay them.

To the extent it matters -- and I'm not sure that it does since Elliott, Fortress and Morgan Stanley are not themselves movants, there has been no showing that any of Elliott, Fortress and Morgan Stanley is any different. And the GM Nova Scotia trustee is not a movant either. And if it were, its obligation would suffer from the other deficiencies just mentioned.

The showing such as it is, is instead that at some unstated time in the future, Paulson, the certain noteholders and presumably other of GM Nova Scotia noteholders, "would have to bear those expenses of the GM Nova Scotia trustee." Motion paragraph 29.

It appears to be the case that in Canada as in the U.S. the way that would happen would be that the GM Nova Scotia trustee would be compensated from the in rem corpus of the GM

Nova Scotia estate either after submission of the fee application or perhaps by merely sending in a bill. But certainly no showing has been made that individual creditors of GM Nova Scotia are liable for the GM Nova Scotia trustee's fees.

Nor has there been a showing that after GM Nova Scotia gets its distribution on its now allowed claim, I think I heard $477 million, I'm confident that it's more than $450 million, there will be insufficient funds in the GM Nova Scotia estate to pay its trustee's fees, if indeed, that would give rise to a duty on the part of creditors in the Canadian insolvency to pay them.

But my problem is not just a technical one assuming arguendo that require in compliance with the terms of a statute, especially when compliance comes at the expense of innocent Old GM creditors or the United States Government or U.S. taxpayers is merely a technical one. I cannot find the requisite substantial contribution.

It has long been the law in this district as the Government properly observes in its objection that to be eligible for compensation by the estate for substantial contribution to a case, the applicant must have performed a service leading to an actual and demonstrable benefit to the debtor's estate and its creditors. See Granite Partners 213 B.R. at 446 a decision by Chief Judge Bernstein.

As Judge Bernstein further observed, "the substantial contribution provisions must be narrowly construed and services calculated primarily to benefit the client do not justify an award even if they also confer an indirect benefit on the estate." Id at 446.

We all know, of course, that Paulson's counsel encouraged to put the -- me to put the matter into mediation. He did so more than once. He was a voice of sanity and good sense and he accurately described in his papers the earlier submissions and communications that he made to the Court. I appreciate that, but that was good lawyering.

Paulson's counsel was doing little more than acting in the best interest of his client, and to the extent the Paulson noteholders did anything themselves, they were once again acting in their self-interest. Without the settlement, they would have had to wait years for a distribution for a decision from me for a foreseeable litigation over whether their assignor's misconduct could be imputed to them and for the inevitable appeals.

They also locked in for themselves a recovery that could have been lower or even zero if they had not settled the matter. Their counsel was smart to do what he did, but it is indisputable that what he did was, as Judge Bernstein put it, "primarily to benefit the client."

It's also the case as Mr. Jones on behalf of the

Government properly observed that a matter of its character, except for its enormous size does not differ in concept from any time that a claimant has a massive claim against the estate and enters into a settlement to reduce and allow it in a lower sum.

Any such effort inherently is adverse to the remainder of the creditor community and is a manifestation of the understandable desire by claimants to get as much as they can on claims and to lock in their reduce and allow amounts in an amount that meets their needs and concerns. Estates indirectly benefit from that because they're no longer at risk of paying even more. But the principle argued before me today if taken to its logical conclusion, would subject the future estates of the world to a -- an unending stream of similar substantial contribution requests when people make demands and then are willing to take a little less than their demands or even a lot less than their demands.

That is inconsistent with the legal principle Judge Bernstein articulated which is one of the underpinnings of the juris prudence on Chapter 11 cases on my watch if not other cases elsewhere in this District.

Further, getting New GM to pony up funds to bankroll the settlement, including to pay $16 million in legal fees of which 2.5 million was for counsel for the Paulson noteholders themselves and another 1.5 million was for the GM Nova Scotia

trustee and his counsel was not a benefit to the Old GM estate.

In earlier comments to me, Mr. Fisher explained that he was agnostic on anything New GM might pay and by extension GM Canada, the import being that this is not assets that are on my watch with a duty for me to protect for the benefit of the stakeholders in Old GM.

In the U.S. legal fees are not awarded to parties in litigation in the absence of authorizing litigation and especially before a party has prevailed. If people want to voluntarily write out checks for legal fees or if they agree to pay them for goals of their own, they are free to do so and apparently either New GM or GM Canada was willing to do so here.

I don't rule out the possibility that the efforts by New GM or GM Canada to do so facilitated the settlement, but the important thing is that whatever was paid by that means was not a sum for which all GM creditors were on the hook.

Another matter. The fact that the application seeks to rely upon asserted substantial contributions by Elliott and Fortress weakens the application, not strengthens it, though I would have the same problems with the application if those entities were silent beneficiaries without Paulson having gone to bat for them in the public way that it did.

This whole controversy we've been litigating for four years arose by reason of the efforts of the Nova Scotia

bondholders to get what they unabashedly refer to variously as a double dip or even a triple dip from the Old GM estate. See the testimony by Elliott's Cedar Home (ph) at the trial of September 6, 2012, trial transcript at pages 46 to 47.

Cedar Home referred to his counsel as the "double dip defender of the year." See Plaintiff's Exhibit 64. Aurelius' Groper, and Fortress' Truong, T-r-o-u-n-g, bragged amount the remarkable deal they had received and Truong responded after being congratulated as a "rock star" for securing the lockup deal, "I am pretty pleased with the negotiated outcome, especially vis-à-vis other GM creditors." And now I'm being told that these guys made a substantial contribution to the Old GM estates?

What is more troublesome still is the evidence I heard in the trial that Appaloosa, Fortress and Aurelius formulated a plan to object to the 363 sale if their demands before GM's Chapter 11 case was files weren't met. See trial transcript of September 20, 2012 at pages 73 to 74.

These are not the makings of a substantial contribution to the success of GM's Chapter 11 case. The totality of the evidence I heard in the trial made it unmistakably clear that the parties who negotiated the lock up agreement were trying to make a profit off the distress in the U.S. auto industry, not trying to assist it in anyway and were looking out for no one but themselves.

It may be -- may well be that conduct and motivations of that sort are not sufficient to justify equitable subordination, but they do not amount to a substantial contribution. And it's no answer to say that the applicants who are seeking substantial contribution compensation not for the entirety of the four year controversy but for their efforts at the end to settle it.

That's tantamount to saying, and there are many things you can say it's tantamount to saying, I'll use a more restrained one, that after so many steps to enrich oneself at the expense of Old GM's other creditors, an entity should be rewarded for being willing to enrich itself for a little less.

So while the settlement is approved and while I welcome it, the application for substantial contribution is denied.

Mr. Jones, you're to settle an order that states in substance that for the reasons set forth on the record, the motion was denied.

The time to appeal from this determination will run from the date of the ensuing order and not from the date that I am dictating it.

MR. JONES: Thank you, Your Honor. I have to be at another matter, so I won't be able to turn to the order until tomorrow if that's acceptable?

THE COURT: That will be just fine.

Am I correct that we have no further business, anybody?

(No response)

THE COURT: Then we're adjourned. Have a good day.

(Proceedings concluded at 4:00 PM)

I N D E X

R U L I N G S

C E R T I F I C A T I O N

I, Sheila G. Orms, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: October 22, 2013

Shelia G. Orms

Digitally signed by Shelia G. Orms
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